

Arrest and Conviction Records under the Law

How does the law define (Wisconsin Fair Employment Law, Wisconsin Statutes. 111.31-111.395) arrest record?

Arrest record is defined as information that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense by any law enforcement or military authority.

How does the law define conviction record?

Conviction record is defined as information indicating that a person has been convicted of any felony, misdemeanor or other offense, has been judged delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled by any law enforcement or military authority.

Can an employer discharge a current employee because of a pending criminal charge?

No. An employer may, however, **suspend** an employee, if the offense-giving rise to the pending criminal charge is **substantially related** to the circumstances of the particular job or licensed activity.

Can an employer refuse to hire a person because of a record of arrests that did not lead to conviction?

No. An employer is not allowed to ask about arrests, other than pending charges.

What can an employer ask regarding arrest and conviction records?

An employer may ask whether an applicant has any pending charges or convictions, as long as the employer makes it clear that these will only be given consideration if the offenses are substantially related to the particular job. An employer cannot, legally, make a rule that no persons with conviction records will be employed. Each job and record must be considered individually.

Can an employer refuse to hire an applicant because of a lengthy record of convictions or conviction for a crime the employer finds upsetting?

An employer may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job. Whether the crime is an upsetting one may have nothing to do with whether it is substantially related to a particular job.

What is meant by substantially related?

The law does not specifically define it. The "substantially related" test looks at the circumstances of an **offense**, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found. The legislature has determined that certain convictions are substantially related to employment in child and adult caregiving programs regulated by the Department of Health and Family Services.

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What if an employer believes a pending charge or conviction is substantially related but the employee or applicant believes it is not?

In this situation, the employee or applicant may file a complaint and the Equal Rights Division will make a determination as to whether there is a substantial relationship, with either party having the right to appeal the decision.

Can an employer refuse to hire or discharge a person with a pending charge or conviction because other workers or customers don't want the person with a conviction there?

No. The law makes no provision for this type of problem. The employer must show that the conviction record is substantially related to the particular job. Co-worker or customer preference is not a consideration.

Is it a violation of the law if the applicant's conviction record is a part of the reason for not being hired, but not the whole reason?

Yes. A conviction record that is not substantially related to the particular job should be given no consideration in the hiring process.

How should an applicant answer questions on an application regarding conviction record?

It is best to answer all questions on an application as honestly and fully as possible, and to offer to explain the circumstances of the conviction to the employer.

Should an employer ask about the circumstances of a conviction during an interview?

Yes. An employer must obtain enough information to determine if the conviction record is substantially related to the job. If the employer decides there is a substantial relationship, employment may be refused but the employer must be prepared to defend the decision if the applicant believes there is not a substantial relationship and files a complaint.

What should a person do if refused employment or discharged because of an arrest or conviction record (that is not substantially related)?

Complaints about violations of the law protecting persons from discrimination because of arrest and/or conviction may be filed with:

**State of Wisconsin
Department Of Workforce Development
Equal Rights Division**

201 E Washington Ave. Room A300
P.O. Box 8928
Madison, WI 53708
Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N. 6th Street
Room 255
Milwaukee, WI 53203
Telephone: (414) 227-4384
TTY: (414) 227-4081

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